

Regular Session, 2010

SENATE BILL NO. 320

BY SENATOR QUINN (On Recommendation of the Louisiana State Law Institute)

CHILDREN. Provides for the relocation of the residence of a child. (8/15/10)

AN ACT

To amend and reenact Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, presently comprised of R.S. 9:355.1 through 355.17, to be comprised of R.S. 9:355.1 through 355.19, relative to the relocation of the residence of a child; to provide for definitions; to provide for applicability; to provide for the proposal of relocation; to provide for notice; to provide for an objection; to provide for the limitation on an objection to relocation by non-parents; to provide for the failure to object; to provide for court authorization to relocate; to provide for a temporary order; to provide for the priority for hearings; to provide for factors to determine relocation; to provide for the appointment of a mental health expert; to provide for the burden of proof; to provide for a modification of custody; to provide for the posting of security; to provide for sanctions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart E of Part III of Chapter 1 of Code Title V of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, presently comprised of R.S. 9:355.1 through 355.17, is hereby amended and reenacted to comprise of R.S. 9:355.1 through 355.19, to

read as follows:

SUBPART E. RELOCATING A CHILD'S RESIDENCE

§355.1. Definitions

As used in this Subpart:

~~(1) "Equal physical custody" means that the parents share equal parental authority of the child absent a court order to the contrary.~~

~~(2) "Parent entitled to primary custody" means a parent designated by a court order as the sole or primary custodian or domiciliary parent within a joint custody arrangement, but does not include a parent who has equal physical custody.~~

~~(3)~~ **(1)** "Principal residence of a child" means:

(a) The location designated by a court to be the primary residence of the child.

(b) In the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside.

(c) In the absence of a court order or an express agreement, the location, if any, at which the child has spent the majority of time during the prior six months.

~~(4)~~ **(2)** "Relocation" means:

~~(a) Intent to establish legal residence with the child at any location outside of the state.~~

~~(b) If there is no court order awarding custody, an intent to establish legal residence with the child at any location within the state that is at a distance of more than one hundred fifty miles from the other parent. If there is a court order awarding custody, then an intent to establish legal residence with the child at a distance of more than one hundred fifty miles from the domicile of the primary custodian at the time the custody decree was rendered.~~

~~(c)~~ **a** change in the principal residence of a child for a period of sixty days or more, but does not include a temporary absence from the principal residence.

Comments – 2010 Revision

(a) This revision moves the geographic threshold for application of the relocation statutes to R.S. 9:355.2.

(b) Absences of more than sixty days which are temporary – including, for instance, a summer holiday – are not relocation as defined in this Subpart.

§355.2. Applicability

A. This Subpart shall apply to an order regarding custody of or visitation with a child issued:

(1) On or after August 15, 1997.

(2) Before August 15, 1997, if the existing custody order does not expressly govern the relocation of the child.

**B. This Subpart shall apply to a proposed relocation:**

**(1) When there is intent to establish the principal residence of a child at any location outside of this state.**

**(2) If there is no court order awarding custody, when there is an intent to establish the principal residence of a child at any location within this state that is at a distance of more than one hundred miles from the domicile of the other parent.**

**(3) If there is a court order awarding custody, when there is an intent to establish the principal residence of a child at any location within this state that is at a distance of more than one hundred miles from the principal residence of the child at the time the most recent custody decree was rendered.**

**(4) If no principal residence is designated by the court or the parties have equal physical custody, when there is an intent to establish the principal residence of a child at any location within this state that is at a distance of more than one hundred miles from the domicile of a person entitled to object to relocation of the residence of the child.**

~~B. C.~~ To the extent that a provision of this Subpart conflicts with an existing custody order, this Subpart shall not apply to the terms of that order that governs relocation of the child.

~~C. D.~~ This Subpart shall not apply when:

(1) The ~~parents of a child~~ **persons required to give notice of and the**

1 **persons entitled to object to a proposed relocation** have entered into an express  
2 written agreement for ~~a temporary~~ relocation of that child's principal residence;  
3 ~~regardless of the duration of the temporary relocation.~~

4 (2) An order issued pursuant to Domestic Abuse Assistance, Part II of  
5 Chapter 28 of Title 46 or the Post-Separation Family Violence Relief Act or  
6 Injunctions and Incidental Orders, Parts IV and V of Chapter 1 of Code Title V of  
7 Code Book I of Title 9, **except R.S. 9:372.1**, all of the Louisiana Revised Statutes  
8 of 1950, Domestic Abuse Assistance, Chapter 8 of Title XV of the Children's Code,  
9 or any other restraining order, preliminary injunction, permanent injunction, or any  
10 protective order prohibiting a spouse from harming or going near or in the proximity  
11 of the other spouse is in effect.

12 Comments – 2010 Revision

13  
14 (a) This revision reduces the threshold distance for application of the  
15 relocation statutes from 150 miles to 100 miles in recognition of the likelihood that  
16 weekday visitation and the general ability to participate in the child's daily life will  
17 be substantially affected by distances of more than 100 miles. The relocation laws  
18 of a number of other states hinge upon relocations involving moves in excess of 100  
19 miles (*See, e.g., Mich. Comp. Laws § 722.31; Tenn. Code § 36-6-108*) and many  
20 states apply their relocation statutes to moves involving even shorter distances. *See,*  
21 *e.g., Ala. Code 1975 § 30-3-162 (60 miles); Or. Rev. Stat. § 107.159 (60 miles).*  
22

23 (b) "Equal physical custody" in Paragraph B(2) refers to a custody  
24 arrangement under which persons have equal or approximately equal physical  
25 custody. It should be interpreted to mean one half or an approximately equal amount  
26 of time, expressed in percentages such as forty-nine percent/fifty-one percent.  
27 "Equal physical custody" is distinguished from "shared custody" under R.S. 9:315.9,  
28 which Louisiana courts have interpreted to include custody arrangements with a split  
29 of sixty-three percent/thirty-seven percent. *See, e.g., Westcott v. Westcott*, 927 So.  
30 2d 377 (La. App. 1st Cir. 2005). Such a split is not "equal physical custody" under  
31 this statute.  
32

33 (c) If a person proposes relocation of a child within the state and at distances  
34 shorter than those in Paragraph B(2), Louisiana's relocation statutes have no  
35 application and the person seeking to relocate has no obligation to provide notice or  
36 seek court approval in advance of the move.  
37

38 (d) Paragraph B(3) changes the focus of the distance threshold from the  
39 domicile of the primary custodian at the time the custody decree was rendered to the  
40 principal residence of the child at the time of the custody decree in light of the notion  
41 that the body of relocation statutes focuses on a relocation of the child and not his  
42 caregivers.  
43

44 (e) *See* R.S. 9:355.7 and 355.8 regarding the persons entitled to object to a  
45 proposed relocation. Not all persons entitled to notice of a relocation are permitted  
46 to object.  
47

(f) The purpose of Paragraph D(2) is to prevent the application of Louisiana's child relocation statutes, requiring the party proposing relocation to notify a person entitled to receive notice of the details of the proposed move, in situations involving family violence, domestic abuse, and the like. The reference to "Part V of Chapter 1 of Code Title V of Code Book I of Title 9," however, includes R.S. 9:372.1, which governs an injunction prohibiting harassment. When an injunction has been issued only under R.S. 9:372.1, there is insufficient justification for exempting the proposed relocation from the requirements of the child relocation statutes.

**§355.3. Persons authorized to propose relocation of principal residence of a child**

**The following persons are authorized to propose relocation of the principal residence of a child by complying with the notice requirements of this**

**Subpart:**

- (1) A person designated in a court decree as the sole custodian.**
- (2) A person designated in a court decree as the domiciliary parent in a joint custody arrangement.**
- (3) A person sharing equal physical custody under a court decree.**
- (4) A person sharing equal parental authority under Chapter 5 of Title VII of Book I of the Louisiana Civil Code.**
- (5) A person who is the natural tutor of a child born outside of marriage.**

Comments – 2010 Revision

(a) Persons authorized to propose relocation of a child's principal residence are generally those with legal decision-making authority over the child, including the sole custodian or domiciliary parent in a joint custody arrangement or the natural tutor of a child born outside of marriage. When parents are married and sharing equal parental authority, both are entitled to propose relocation. Regardless of who holds decision-making authority for the child, however, persons who share equal physical custody of the child under a court decree are equally authorized to propose relocation.

(b) For the definition of "equal physical custody," see R.S. 9:355.2, Comment (b).

~~§355.3.~~ **355.4.** Notice of proposed relocation of child to other parent

A. A ~~parent entitled to primary custody of a child~~ **person proposing relocation of the principal residence of a child** shall notify the other **any person recognized as a** parent of a proposed relocation of the child's principal residence **and any other person awarded custody or visitation under a court decree** as

1 required by R.S. 9:355.4 9:355.5, but before relocation shall obtain either court  
2 authorization to relocate, after a contradictory hearing, or the written consent of the  
3 other parent prior to any relocation.

4 B. If both parents **persons** have equal physical custody of a child under a  
5 court decree, a parent one shall notify the other parent of a proposed relocation of  
6 the child's principal residence as required by R.S. 9:355.4, but 9:355.5, and before  
7 relocation shall obtain either court authorization to relocate, after a contradictory  
8 hearing, or the **express** written consent of the other parent **person** prior to any  
9 relocation.

10 ~~C. Repealed by Acts 2008, No. 751, §2, eff. July 3, 2008.~~

11 Comments – 2010 Revision

12  
13 (a) See R.S. 9:355.3 for a list of persons authorized to propose relocation of  
14 a child's principal residence.

15  
16 (b) For the definition of "equal physical custody," see R.S. 9:355.2,  
17 Comment (b).  
18

19 ~~§355.4. 355.5.~~ Mailing notice of proposed relocation address

20 A. Notice of a proposed relocation of the principal residence of a child shall  
21 be given by registered or certified mail, return receipt requested, to the last known  
22 address of the parent **person entitled to notice under R.S. 9:355.4** no later than  
23 either **any of the following**:

24 (1) The sixtieth day before the date of the intended move or proposed  
25 relocation.

26 (2) The tenth day after the date that the parent **person proposing relocation**  
27 knows the information required to be furnished by Subsection B of this Section, if  
28 the parent **person** did not know and could not reasonably have known the  
29 information in sufficient time to comply with the sixty-day notice, and it is not  
30 reasonably possible to extend the time for relocation of the child.

31 B. The following information, if available, shall be included with the notice  
32 of intended relocation of the child:

33 (1) The intended new residence, including the specific address, if known.

(2) The mailing address, if not the same.

(3) The home **and cellular** telephone ~~number~~ **numbers**, if known.

(4) The date of the intended move or proposed relocation.

(5) A brief statement of the specific reasons for the proposed relocation of a child, if applicable.

(6) A proposal for a revised schedule of **physical custody or** visitation with the child.

(7) A statement informing the ~~other parent~~ **person entitled to object** that an objection to the proposed relocation shall be filed within thirty days of receipt of the notice and that the other ~~parent~~ **person** should seek legal advice immediately.

C. A ~~parent~~ **person** required to give notice of a proposed relocation shall have a continuing duty to provide the information required by this Section as that information becomes known.

#### §355.6. Failure to give notice of relocation

The court may consider a failure to provide notice of a proposed relocation of a child as:

(1) A factor in making its determination regarding the relocation of a child.

(2) A basis for ordering the return of the child if the relocation has taken place without notice or court authorization.

(3) Sufficient cause to order the ~~parent seeking to relocate the child~~ **person proposing relocation** to pay reasonable expenses ~~and attorney fees~~ incurred by the person objecting to the relocation.

#### **§355.7. Objection to relocation of child**

**Except for a person with equal physical custody of a child under a court decree, a person entitled to object to a proposed relocation of the principal residence of a child shall initiate a summary proceeding objecting to the proposed relocation within thirty days after receipt of the notice. A person with equal physical custody of a child under a court decree who desires to relocate shall comply with R.S. 9:355.4(B).**

## Comments – 2010 Revision

(a) The availability of the summary proceeding described in this Section is subject to the limitations described in R.S. 9:355.8. Some persons entitled to receive notice of a proposed relocation of a child's residence are not permitted to initiate a proceeding to object to the proposed relocation.

(b) A person entitled to object to a proposed relocation who does not initiate a proceeding to object may nonetheless commence an action to change custody or the visitation schedule in light of the changed circumstances of the relocation.

(c) Initiating a summary proceeding requires the filing of a motion or rule to show cause in compliance with Code of Civil Procedure Articles 2591-2596. Retaining an attorney to handle an objection to relocation is not sufficient to initiate a proceeding absent any filings.

(d) For the definition of "equal physical custody," see R.S. 9:355.2, Comment (b).

**§355.8. Limitation on objection by non-parents**

**Only a person recognized as a parent or awarded custody may object to the relocation. A non-parent who has been awarded visitation may initiate a proceeding to obtain a revised visitation schedule.**

## Comment – 2010 Revision

This Section recognizes the primacy of parental rights over non-parent rights regarding relocation of a child. *See generally Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed. 49 (2000) (holding that Washington's non-parent visitation statute violated mother's fundamental right to raise her children as she saw fit). Although a non-parent entitled to notice of a proposed relocation under this Subpart may not commence an action to restrict a parent's right to relocate the child, the non-parent may, if granted visitation, commence an action to revise the visitation schedule in light of the changed circumstances of the relocation. A non-parent who has been awarded custody of the child may, however, object to a parent's proposal to relocate the child.

**§355.9. Failure to object to notice of proposed relocation**

**Except as otherwise provided by R.S. 9:355.4(B), the person required to give notice may relocate the principal residence of a child after providing the required notice unless a person entitled to object initiates a summary proceeding to prevent the relocation within thirty days after receipt of the notice.**

~~§355.5:~~ **355.10.** Court authorization to relocate

A ~~parent seeking to relocate the principal residence of a child~~ **person proposing relocation** shall not, absent **express written** consent **or failure to timely**



1 **object to the proposed relocation**, ~~remove~~ **relocate** the child pending resolution of  
2 ~~the~~ dispute, or final order of the court, unless the ~~parent~~ **person** obtains a temporary  
3 order ~~to do so~~ pursuant to R.S. 9:355.10 **9:355.11**.

4 ~~§355.10:~~ **355.11**. Temporary order

5 A. The court may grant a temporary order allowing a ~~parent to relocate~~  
6 **relocation**.

7 B. The court, upon the request of the moving ~~parent~~ **party**, may hold a  
8 ~~limited evidentiary~~ **preliminary** hearing on the proposed relocation but ~~may~~ **shall**  
9 not grant ~~court~~ authorization to ~~remove~~ **relocate** the child on an ex parte basis.

10 C. If the court issues a temporary order authorizing a ~~parent to relocate with~~  
11 ~~the child~~ **relocation**, the court ~~may~~ **shall** not give undue weight to the temporary  
12 relocation as a factor in reaching its final determination.

13 D. If temporary relocation of a child is permitted, the court may require the  
14 ~~parent~~ **person** relocating the child to provide reasonable security guaranteeing that  
15 the court ordered **physical custody or** visitation with the child will not be interrupted  
16 or interfered with ~~by the relocating parent~~ or that the relocating ~~parent~~ **person** will  
17 return the child if court authorization for the removal is denied at the final hearing.

18 **E. An order not in compliance with the provisions of this Section is not**  
19 **enforceable, and is null and void.**

20 Comment – 2010 Revision

21  
22 Subsection (E) tracks the language of Code of Civil Procedure Article  
23 3945(E), which makes temporary, custody orders unenforceable, "null," and "void"  
24 if not in compliance.  
25

26 ~~§355.9:~~ **355.12**. Priority for ~~temporary and final~~ hearing **on objection**

27 A hearing on ~~either a temporary or permanent order permitting or restricting~~  
28 **the objection to the proposed** relocation shall be ~~accorded appropriate priority on~~  
29 ~~the court's docket~~ **held within thirty days of the filing of the objection.**

30 Comment – 2010 Revision

31  
32 After entry of an order on relocation, a Louisiana court may retain  
33 jurisdiction consistent with Louisiana law and the Uniform Child Custody  
34 Jurisdiction and Enforcement Act. (R.S. 13:1814).

1  
2       ~~§355.12.~~ **355.13.** Factors to determine contested relocation

3               A. In reaching its decision regarding a proposed relocation, the court shall  
4 consider ~~the following factors~~ **all relevant factors in determining whether**  
5 **relocation is in the best interest of the child. Those factors may include:**

6               (1) The nature, quality, extent of involvement, and duration of the ~~child's~~  
7 relationship **of the child** with the ~~parent~~ **parent person** proposing to relocate and with the  
8 nonrelocating ~~parent~~ **parent person**, siblings, and other significant persons in the child's life.

9               (2) The age, developmental stage, needs of the child, and the likely impact  
10 the relocation will have on the ~~child's~~ physical, educational, and emotional  
11 development, ~~taking into consideration any special needs~~ of the child.

12              (3) The feasibility of preserving a good relationship between the  
13 nonrelocating ~~parent~~ **parent person** and the child through suitable **physical custody or**  
14 visitation arrangements, considering the logistics and financial circumstances of the  
15 parties.

16              (4) The child's ~~preference~~ **views**, taking into consideration the age and  
17 maturity of the child.

18              (5) Whether there is an established pattern of conduct of the ~~parent~~ **parent person**  
19 seeking the relocation, either to promote or thwart the relationship of the child and  
20 the nonrelocating party.

21              (6) ~~Whether~~ **How** the relocation of the child will ~~enhance~~ **affect** the general  
22 quality of life for ~~both the custodial parent seeking the relocation and the child,~~  
23 including but not limited to financial or emotional benefit or educational opportunity.

24              (7) The reasons of each ~~parent~~ **parent person** for seeking or opposing the relocation.

25              (8) The current employment and economic circumstances of each ~~parent~~  
26 **person** and ~~whether or not~~ **how** the proposed relocation is ~~necessary to improve~~ **will**  
27 **affect** the circumstances of ~~the parent seeking relocation of the child.~~

28              (9) The extent to which the objecting ~~parent~~ **parent person** has fulfilled his or her  
29 financial obligations to the ~~parent~~ **parent person** seeking relocation, including child support,

spousal support, ~~and~~ community property, **and alimentary** obligations.

(10) The feasibility of a relocation by the objecting ~~parent~~ **person**.

(11) Any history of substance abuse, **harassment**, or violence by either ~~parent~~ **the person seeking or opposing relocation**, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

B. The court may not consider whether ~~or not~~ the person seeking relocation of the child will relocate without the child if relocation is denied or whether ~~or not~~ the person opposing relocation will also relocate if relocation is allowed.

#### Comments – 2010 Revision

(a) This revision changes the language of the statute to make it clear that, as in cases requiring the application of the factors of Civil Code Article 134, a court need not make a factual finding on every factor.

(b) In considering the needs of the child and the developmental impact of relocation, the court may take into account not only the general needs of similarly situated children, but also any special needs of the particular child under consideration.

(c) The "logistics" in Paragraph A(3) may include a consideration of the amount of time the child will be required to spend traveling in order to maintain a meaningful relationship with the person objecting to the relocation, the distance involved, and the proximity, availability, and safety of travel arrangements.

(d) A consideration of the "preference" of the child is a traditional factor in cases involving custody. The word "views" is used in order to broaden the inquiry and to decrease the potentially harmful impact of asking a child to choose in a relocation contest.

(e) Because the focus of the best interest inquiry in relocation is on the child, references to improvements in the custodial parent's quality of life and the necessity of improving the circumstances of a parent in Paragraphs A(6) and A(8) have been eliminated. A child may benefit or suffer detriment either directly or indirectly from a change in the quality of life or economic circumstances of any person exercising custody or visitation with him, and such benefits and detriments are to be considered by the court. The assessment must be focused on the effect of relocation on the child, however, and not the benefit relocation will provide to the adults exercising custody or visitation rights.

(f) Paragraph A(7) may lead to a consideration of the mental and emotional well-being of both the person seeking to relocate and the person opposing it. The substantial mental and emotional toll of custody proceedings should be considered in the relocation context, just as it is in Civil Code Article 134 on factors affecting the best interest of the child in custody disputes in general.

~~§355-8:~~ **355.14**. Mental health expert; appointment

The court, **on motion of either party or on its own motion**, may promptly

1 appoint an independent mental health expert to render a ~~determination as to whether~~  
 2 ~~the proposed relocation is in the best interest of~~ **an opinion as to the effect of the**  
 3 **proposed relocation on** the child.

4 §355.15. Application of factors at initial hearing

5 If the issue of relocation is presented at the initial hearing to determine  
 6 custody of and visitation with a child, the court shall ~~apply~~ **also consider** the factors  
 7 set forth in R.S. ~~9:355.12~~ **9:355.13** in making its initial determination.

8 Comment – 2010 Revision  
 9

10 In an initial custody determination, the court will generally consider the  
 11 factors concerning best interest of the child set out in Civil Code Article 134. This  
 12 statute requires the court to consider application of the relevant factors specific to  
 13 relocation in R.S. 9:355.13 as well as the Article 134 factors. Dicta in *McLain v.*  
 14 *McLain*, 974 So.2d 726, 733 (La.App. 4th Cir. 2007), stating that the Article 134  
 15 factors are "arguably not applicable" when relocation is at issue in the initial custody  
 16 hearing, is no longer accurate under this revision.  
 17

18 ~~§355.13:~~ **355.16.** Burden of proof

19 The relocating ~~parent~~ **person** has the burden of proof that the proposed  
 20 relocation is made in good faith and is in the best interest of the child. ~~In~~  
 21 ~~determining the child's best interest, the court shall consider the benefits which the~~  
 22 ~~child will derive either directly or indirectly from an enhancement in the relocating~~  
 23 ~~parent's general quality of life.~~

24 Comments – 2010 Revision  
 25

26 (a) Although the person proposing relocation has the burden to prove that the  
 27 relocation attempt is made both in good faith and in the best interests of the child,  
 28 there is no presumption in favor of or against relocation of the child's residence.  
 29 This Section places the initial burden of proof on the person proposing relocation.  
 30 If a proceeding objecting to the relocation is instituted in accordance with R.S.  
 31 9:355.7, the person wishing to relocate must prove by a preponderance of the  
 32 evidence that relocation meets the good faith and best interest standards. If that  
 33 burden of proof has been met, the burden then shifts to the person objecting to the  
 34 relocation to show by a preponderance of the evidence that the proposed relocation  
 35 is not made in good faith or is not in the best interest of the child.  
 36

37 (b) This revision eliminates reference to the court's consideration of an  
 38 enhancement in the quality of life of the person seeking relocation in determining the  
 39 best interest of the child. It does not, however, change the law. A detailed list of  
 40 factors to be considered in determining whether relocation is in the best interest of  
 41 the child is set out in R.S. 9:355.13 and among them is a consideration of "how the  
 42 relocation of the child will affect the general quality of life for the child, including  
 43 but not limited to financial or emotional benefit or education opportunity."  
 44

1           ~~§355.11.~~ **355.17.** ~~Proposed relocation not basis for modification~~ **Modification of**  
2                                   **custody**

3           Providing notice of a proposed relocation ~~of a child~~ shall not constitute a  
4           change of circumstance warranting a change of custody. ~~Moving~~ **Relocating**  
5           without prior notice **if there is a court order awarding custody** or ~~moving~~  
6           **relocating** in violation of a court order may constitute a change of circumstances  
7           warranting a modification of custody.

8                                   Comment – 2010 Revision  
9

10           In accordance with R.S. 9:355.8, not all persons receiving notice of a  
11           proposed relocation are entitled to object. To the extent moving without prior notice  
12           or in violation of a court order may constitute a change of circumstances warranting  
13           a modification of custody, it is only in a contest between a person proposing  
14           relocation and a person entitled to object to the proposed relocation.  
15

16           ~~§355.14.~~ **355.18.** Posting security

17           If relocation of a child is permitted, the court may require the ~~parent~~ **person**  
18           relocating the child to provide reasonable security guaranteeing that the court  
19           ordered **physical custody or** visitation with the child will not be interrupted or  
20           interfered with by the relocating party.

21           ~~§355.16.~~ **355.19.** Sanctions for unwarranted or frivolous proposal to relocate child  
22                                   or objection to relocation

23           A. After notice and a reasonable opportunity to respond, the court may  
24           impose a sanction on a ~~parent proposing a relocation of the child~~ **person proposing**  
25           or objecting to a proposed relocation of a child if it determines that the proposal was  
26           made or the objection was filed:

27                   (1) To harass the other ~~parent~~ **person** or to cause unnecessary delay or  
28                   needless increase in the cost of litigation.

29                   (2) Without being warranted by existing law or based on a frivolous  
30                   argument.

31                   (3) ~~Based on allegations and other factual contentions which have no~~  
32                   ~~evidentiary support nor, if specifically so identified, could not have been reasonably~~  
33                   ~~believed to be likely to have evidentiary support after further investigation.~~ **In**

**violation of Code of Civil Procedure Article 863(B).**

B. A sanction imposed under this Section shall be limited to what is sufficient to deter repetition of such conduct ~~or comparable conduct by others similarly situated.~~ The sanction may consist of, ~~or include, directives of a nonmonetary nature, an order to pay a penalty to the court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation~~ **reasonable expenses and attorney fees incurred as a direct result of the conduct.**

~~§355.17. Continuing jurisdiction~~

~~If the court grants authorization to relocate, the court may retain continuing, exclusive jurisdiction of the case after relocation of the child as long as the non-relocating parent remains in the state.~~

Section 2. The provisions of this Act shall be effective on August 15, 2010. They shall not apply to any case that is being litigated or appealed in or to any court of this state wherein the custody of a child is an issue due to the relocation of a party on the effective date of this Act; however, any subsequent relocation by a party after final disposition of such litigation pending on the effective date of this Act shall be governed by Section 1 of this Act.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Camille Sebastien Perry.

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## DIGEST

Present law (R.S. 9:355.1) provides that "equal physical custody" means that the parents share equal parental authority of the child absent a court order to the contrary.

Proposed (Comment (b) under R.S. 9:355.2) provides that "equal physical custody" refers to a custody arrangement under which persons have equal or approximately equal physical custody.

Present law (R.S. 9:355.1) provides a definition of "parent entitled to primary custody."

Proposed law deletes this definition of a term not used elsewhere in family law.

Present law (R.S. 9:355.1) provides a definition of "principal residence of a child."

Proposed law (R.S. 9:355.1) retains present law.

Present law (R.S. 9:355.1) provides that "relocation" means an intent to establish the

residence of the child outside of the state, an intent to establish the residence of the child at any location within the state that is at a distance of more than 150 miles from the other parent, an intent to establish the residence of the child at a distance of more than 150 miles from the domicile of the primary custodian, or a change in the principal residence of a child for a period of sixty days or more.

Proposed law (R.S. 9:355.1 and R.S. 9:355.2(B)(1)) retains present law, in part.

Proposed law (R.S. 9:355.2) changes present law to provide that the provisions regarding relocation of a child's residence shall apply when there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than 100 miles from the domicile of the other parent, when there is an intent to establish the principal residence of a child at a distance of more than 100 miles from the current principal residence of the child, or when there is an intent to establish the principal residence of a child at a distance of more than 100 miles from the domicile of a person entitled to object to relocation of the child's residence.

Present law (R.S. 9:355.2) provides for the applicability of the provisions regarding relocation of a child's residence.

Proposed law (R.S. 9:355.2) retains present law, in part and changes present law to state a distance factor for the application of the relocation provisions, and to change the phrase "parents of a child" to "persons required to give notice of and persons entitled to object to a proposed relocation."

Present law (R.S. 9:355.2) provides that the provisions of the present law requiring the party proposing relocation to notify a person entitled to receive notice of the details of the proposed move shall not apply in certain situations, such as those involving family violence and domestic abuse.

Proposed law provides that when an injunction has been granted prohibiting a spouse from harassing the other spouse in a proceeding for divorce, there is insufficient justification for exempting the proposed relocation from the requirements of the child relocation statutes.

Proposed law (R.S. 9:355.3) authorizes the following persons to propose a relocation of a child's principal residence:

- (1) A person designated in a court decree as the sole custodian.
- (2) A person designated in a court decree as the domiciliary parent in a joint custody arrangement.
- (3) A person sharing equal physical custody under a court decree.
- (4) A person sharing equal parental authority under Chapter 5 of Title VII of Book I of the Louisiana Civil Code.
- (5) A person who is the natural tutor of a child born outside of marriage.

Present law (R.S. 9:355.3) provides for a notice of proposed relocation of child.

Proposed law (R.S. 9:355.4) retains present law, in part and changes present law to modify references from "parent" to "persons."

Present law (R.S. 9:355.4) provides for the mailing of a notice of a proposed relocation address.

Proposed law (R.S. 9:355.5) retains present law, in part and changes present law to modify

references from "parent" to "persons," to provide that information relative to cellular phone numbers shall be given, and to provide for a proposed revised schedule of physical custody. Present law (R.S. 9:355.6) provides for the failure to give notice of relocation.

Proposed law (R.S. 9:355.6) retains present law, in part and changes present law to modify references from "parent" to "persons," and eliminates court authorization to consider an award of attorney fees to the person objecting to relocation by the party proposing relocation when there is a failure to provide notice for these matters.

Proposed law (R.S. 9:355.7) requires a person entitled to object to a proposed relocation of the principal residence of a child to initiate a summary proceeding objecting to the proposed relocation within 30 days after receipt of the notice, except for a person with equal physical custody of a child under a court decree, and requires a person with equal physical custody of a child under a court decree who desires to relocate to comply with notice requirements. Proposed law (R.S. 9:355.8) limits an objection to relocation to a person recognized as a parent or awarded custody, but authorizes a non-parent who has been awarded visitation to initiate a proceeding to obtain a revised visitation schedule.

Proposed law (R.S. 9:355.9) authorizes the person required to give notice to relocate the principal residence of a child after providing the required notice, unless a person entitled to object initiates a summary proceeding to prevent the relocation within 30 days after receipt of the notice, except when persons have equal physical custody of the child under a court decree.

Present law (R.S. 9:355.5) provides for a court authorization to relocate.

Proposed law (R.S. 9:355.10) retains present law, in part and changes present law to modify references from "parent" to "persons" and provides for the failure to timely object to a proposed relocation.

Present law (R.S. 9:355.10) provides for a temporary order allowing a parent to relocate.

Proposed law (R.S. 9:355.11) retains present law, in part and changes present law to modify references from "parent" to "persons," to provide for physical custody, and to provide that an order not in compliance is null and void.

Present law (R.S. 9:355.9) requires a hearing on either a temporary or permanent order permitting or restricting relocation to be accorded appropriate priority on the court's docket.

Proposed law (R.S. 9:355.12) changes present law to provide that a hearing on the objection to the proposed relocation shall be held within 30 days from the filing of the objection.

Present law (R.S. 9:355.12) provides for the factors that a court shall consider in determining if a relocation is in the best interest of the child.

Proposed law (R.S. 9:355.13) retains present law, in part and changes present law to provide that the court shall consider "all relevant factors," to modify references from "parent" to "persons," to provide for physical custody, and to provide for harassment by a person seeking or opposing relocation.

Present law (R.S. 9:355.8) provides for the appointment of a mental health expert.

Proposed law (R.S. 9:355.14) retains present law, in part and changes present law to provide that the court on motion of either party or on its own motion may appoint a mental health expert to render an opinion on the effect of the proposed relocation on the child.

Present law (R.S. 9:355.15) requires the court to apply the factors concerning relocation in making its initial determination, if the issue of relocation is presented at the initial hearing



to determine custody of and visitation with a child.

Proposed law (R.S. 9:355.15) retains present law, in part and changes present law to provide that the court "shall also consider" rather than "apply" the factors to determine a contested relocation at an initial hearing.

Present law (R.S. 9:355.13) provides that the relocating parent has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child and requires the court, in determining the child's best interest, to consider the benefits which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life.

Proposed law (R.S. 9:355.16) retains present law, in part and changes present law to modify references from "parent" to "persons" and deletes the provision requiring the court to consider the enhancement on the child's life that relocation might create.

Present law (R.S. 9:355.17) provides that if the court grants authorization to relocate, the court may retain continuing, exclusive jurisdiction of the case after relocation of the child as long as the non-relocating parent remains in the state.

Proposed law deletes this provision.

Present law (R.S. 9:355.11) provides that giving notice of a proposed relocation of a child shall not constitute a change of circumstance warranting a change of custody, but moving without prior notice or moving in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Proposed law (R.S. 9:355.17) provides that giving notice of a proposed relocation shall not constitute a change of circumstance warranting a change of custody, but relocating without prior notice if there is a court order awarding custody or relocating in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Present law (R.S. 9:355.14) provides that if relocation of a child is permitted, the court may require the parent relocating the child to provide reasonable security guaranteeing that the court ordered visitation with the child will not be interrupted or interfered with by the relocating party.

Proposed law (R.S. 9:355.18) retains present law, in part and changes present law to modify references from "parent" to "persons" and to provide for physical custody.

Present law (R.S. 9:355.16) provides for sanctions for unwarranted or frivolous proposals to relocate the child or an objection to relocation.

Proposed law (R.S. 9:355.19) retains present law, in part and changes present law to modify references from "parent" to "persons."

Proposed law provides that the provisions of the proposed law shall be effective on August 15, 2010 and shall not apply to any case that is being litigated or appealed in or to any court of this state wherein the custody of a child is an issue due to the relocation of a party on the effective date of the proposed law; however, any subsequent relocation by a party after final disposition of such litigation pending on the effective date of the proposed law shall be governed by it.

(Amends R.S. 9:355.1- 355.19)